REMARKS

The Office Action dated 9 July 2008 has been fully considered by Applicant.

Enclosed is a Petition For Two-Month Extension of Time and a check in the amount of $490

Claim 1 is currently amended. Claims 2-4, and 9-11 have been previously presented. Claims 5- 8, 12 and 13 have been canceled.

In response to the Examiner's arguments, Applicant believes that Examiner Shepard 's interpretation that Barrett teaches that auxiliary data is transmitted separately from video data has inappropriately applies an ex post facto analysis to Barrett in light of Applicant's present invention. Applicant directs Examiner Shepard's attention to Col 9, lines 44-46 of Barrett wherein it states in connection with the download of large quantities of data the electronic programming guide could be enhanced to provide video clips, which implies that the electronic program guide and video clips are transmitted together as one download. This is further reinforced at Col 9, line 66 and Col. 10, line 1 which discloses that video content can be inserted into the digital data stream to avoid reconstructing the video signal from digitized data. The digital data stream must be the electronic program guide data into which the video clips are inserted as previously indicated, as it is not video data (otherwise such data could be entirely transmitted as video data rather than having to be inserted into a digital data stream). Therefore, contrary to the Examiner's interpretations, Barrett teaches that the electronic program guide and video data are transmitted together.

Accordingly, Barrett does not disclose the claim limitation set forth in claim 1, Lines 15-17 that the video and/or audio data to be stored is transmitted and downloaded separately from the auxiliary data.

Applicant also believes that Examiner Shephard has inappropriately applied an ex post facto analysis to Lawler in view of Applicant's present invention when the Examiner interprets that Lawler downloads and stores video data in local memory in the broadcast data receiver. The cited section of Lawler (Col. 6, lines 54-64) does not refer to the system checking for video data in the electronic program guide database as indicated by the Examiner, but for preview media information, which indicates whether or not the preview available includes a video clip. The enquiry block 128 leads to block 130 if the video clip is available, but such availability is not local as indicated by the Examiner. In contrast, the video clip is stored remotely at the central control node 12 as stipulated at Col. 7, lines 1-5, and as it is cued for transmission remotely, it is not downloaded to the user. Therefore, contrary to the Examiner's interpretation, Lawler teaches that the video clip data is stored remotely, not locally.

Therefore, the Examiner's objections to claim 1 are moot in light of the above clarifications. The system of Lawler allows the user to view video clips if they are ready for transmission at the server, but of course this means that the user's viewing is disrupted and dependent on clip availability of the server. Thus, according to Lawler, the user many not be able to view the desired clips. In contrast, the present invention teaches that the clips can be downloaded to local storage at off-peak times, and they are therefore available to the user when requested.

Accordingly, Lawler does not disclose the claim limitations set forth in claim 1, lines 7-15, that the video data is stored locally on the hard disc memory.

Claim 12 has been objected to because of informalities. Claim 12 has been currently canceled.

Claim 13 has been rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. Claim 13 has been currently canceled.

Claims 1-4, 10 and 11 rejected under 35 USC 103(a) as being unpatentable over United States Patent No. 6,868,551 to Lawler et al in view of United States Patent No. 6,412,112 to Barrett et al. In view of United States Patent No. 6,453,471 to Klosterman are traversed herein.

Claim 1 has been amended to provide for, as a part thereof, a storage means in the form of a hard disk memory as part of the broadcast data receiver in which video and/or audio data is downloaded and held in storage locally for subsequent retrieval and display upon the selection of a program from the electronic program guide and to which a portion of the stored video and/or audio data relates.

The MPEP 2143.03 states the following:

> To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art.

The Barrett '112 patent teaches that video clips can be downloaded but only in conjunction with corresponding electronic program guide data. Thus, in combination, the receiver created by the teachings of Lawler and Barrett would receive electronic program guide and video clip data together and allow storage of video clip data in local member until required, but is inefficient because the electronic program guide data is limited by the storage availability for the video clips. Therefore, the storage space may only be sufficient for a few day's worth of program guide and video clips, which would be frustrating to the user if he/she wants to plan his/her viewing beyond this limit.

The present invention solves the above problem by allowing the electronic program auxiliary data to be broadcast and stored separately to the video clip data. For example, data could be downloaded for six days worth of electronic program data display, but video clip data may be

downloaded separately for only 24 hours at a time. This is possible by the provision of the allocation of identification data to the relevant programs on the electronic program guide and the video clip data which allows an active search for the video clip in storage which has identification data which matches that of the selected program from the electronic program guide. If the identification code is present in the stored data, the appropriate data is selected and processed to allow the video clip to be displayed.

Applicant believes currently amended independent claim 1, along with dependent claims 2-4 and 9-11, is patentable over the cited references and respectfully requests reconsideration of the rejection.

Claim 9 rejected under 35 USC 103(a) as being unpatentable over Lawler in view of Barrett and Klosterman and further in view of Ludwig is traversed herein.

Claim 9 depends upon currently amended independent claim 1 and Applicant believes that it is patentable over the cited references for the same reasons as stated above.

Claim 12 has been rejected under 35 USC 103(a) as being unpatentable over Lawler in view of Sciammarella in view of Barrett in view of Klosterman. Claim 12 has been currently canceled.

Claim 13 has been rejected under 35 USC 103(a) as being unpatentable over Lawler in view of Barrett in view of Rodriquez. Claim 13 has been currently canceled.

Applicant is grateful for the thorough examination of the application by Examiner Shepard and believes the application is now in condition for allowance and such action is earnestly solicited.

If any further issues remain, a telephone conference with the Examiner is requested. If any further fees are associated with this action, please charge Deposit Account No. 08-1500.

Respectfully Submitted

HEAD, JOHNSON & KACHIGIAN

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